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8 CONTINENTAL D.I.A. DIAMOND PRODUCTS, INC.

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 CONTINENTAL D.I.A. DIAMOND
12 PRODUCTS, INC., a California corporation,

13 Plaintiff,

14 vs.

15 DONG YOUNG DIAMOND INDUSTRIAL
16 CO., LTD., a South Korean company,
17 DONGSOO LEE, an individual, and DOES 1-
10, inclusive,

18 Defendants.

19 **AND RELATED COUNTERCLAIMS**

20 Case No. CV 08-2136 SI

21 **JOINT STIPULATION AND
[PROPOSED] ORDER FOR
MODIFICATION OF CASE
MANAGEMENT SCHEDULE AND
TRIAL DATE**

22 Judge: Honorable Susan Illston

23 Complaint Filed: April 24, 2008
24 Trial Date: November 9, 2009

25 **STIPULATION**

26 Plaintiff Continental D.I.A. Diamond Products, Inc. ("Continental") and Defendants Dong
27 Young Diamond Industrial Co., Ltd. and DongSoo Lee (collectively "Defendants"), through their
28 respective counsel of record, submit this Joint Stipulation and [Proposed] Order for Modification of
Case Management Schedule and Trial Date as follows:

1. On September 3, 2008, the Court entered a pre-trial scheduling order setting various
deadlines, including a fact discovery cut-off set for May 15, 2009, and a trial date for November 9,
2009. (Docket No. 44). The Court also set a case management conference for January 9, 2009.

2. On December 30, 2008, the Clerk of the Court issued a notice continuing the case management conference to February 20, 2009. *See* Docket No. 75.

3. Continental and the Defendants (collectively the “Parties”) previously agreed to participate in non-binding private mediation through JAMS. *See* Docket No. 25. Per the Court’s August 5, 2008 ADR Order, the Parties were to complete mediation within 120 days from the date of that order. *See* Docket No. 28. Due to several discovery disputes between the Parties, the Court extended the ADR deadline until January 16, 2009. *See* Docket No. 62.

4. On January 8, 2009, the Parties participated in a full-day mediation before the Honorable Charles A. Legge (Ret.) at JAMS. The Parties were unable to resolve their dispute. At the conclusion of the mediation, however, the Parties agreed to undertake a process that they believe will enable them to articulate and test certain factual assertions that are critical to their respective cases, and will enable them to conduct a serious evaluation of the size and quantification of the respective claims, while conserving the resources of the Parties and the Court.

5. The Parties further agreed that this evaluation process would be pursued in the context of settlement and mediation discussions, that Judge Legge would continue to oversee this process, and that the Parties' respective efforts would be most fruitful and cost-effective if the balance of the case is stayed for ninety (90) days. Judge Legge agreed with this approach and authorized the Parties' counsel to so represent this to the Court.

6. Due to the impact of the stay on the current pre-trial schedule, and to facilitate this evaluation process without prejudicing the Parties' discovery efforts and trial preparations should no settlement be reached, the Parties agree and respectfully request that the current pre-trial scheduling order and November 9, 2009 trial date be vacated.

7. The Parties further agree and respectfully request that the Court continue the February 20, 2009 case management conference to April 17, 2009 where the Parties will report to the Court on whether they were able to informally resolve their dispute and advise the Court on whether there is a need to set a new pre-trial schedule and trial date.

8. This is the first request by the Parties to modify the pretrial schedule and trial date.

9. This is the second request by the Parties to move a case management conference.

See Docket. No. 27.

10. The Parties have also requested the following extensions of time in connection with the pleadings filed in this case:

- The Court granted Defendants' request for relief from default and extension to file their response to Continental's Complaint to June 26, 2008 *See* Docket Nos. 14 and 15.
- The Court granted Continental's request for an extension to file its response to Defendants' Counterclaims from July 16, 2008 to July 23, 2008. *See* Docket Nos. 20 and 21.
- The Court granted Defendants' request for an extension to file their First Amended Answer and Counterclaims from September 19, 2008 to September 26, 2008 *See* Docket Nos. 45 and 46.
- The Court granted Continental's request for an extension to file its response to Defendants' First Amended Answer and Counterclaims from October 10, 2008 to October 17, 2008. *See* Docket Nos. 48 and 49.

11. The Parties' request to stay the action and to vacate the current case management conference, pre-trial scheduling order and current trial date is not for the purpose of delay. Instead, the Parties believe the granting of their request will facilitate the informal resolution of their dispute, conserve the resources of the Parties and the Court and is in the interests of justice.

IT IS SO STIPULATED BY THE PARTIES,

Dated: January 14, 2009

Respectfully submitted,

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

/s/ Jeffrey M. Ratinoff
By: JEFFREY M. RATINOFF

Attorneys for Plaintiff/Counterclaim Defendant,
Continental D.I.A. Diamond Products, Inc.

Dated: January 14, 2009

Respectfully submitted,

PRETI, FLAHERTY, BELIVEAU & PACHIOS, LLP

By: /s/ Alfred C. Frawley

Attorneys for Defendant/Counterclaim Plaintiff,
Dong Young Diamond Industrial Co., Ltd, and DongSoo Lee

ORDER

1. This action is HEREBY STAYED until April 16, 2009.
2. The February 20, 2009 case management conference is HEREBY CONTINUED to April 17, 2009.

All dates on 3. The current pre-trial schedule (Docket No. 44) is ~~HEREBY VACATED~~ are continued 90 days.

4. The November 9, 2009 trial date is ~~HEREBY VACATED~~. continued to 2/15/10.

PURSUANT TO STIPULATION, IT IS SO ORDERED. The pretrial conference is continued to 2/2/10.

Dated:

Susan Holton

THE HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT COURT JUDGE

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